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2009 JAN 14 AM 8:00

HAWAII LABOR
RELATIONS BOARD

Attorneys for Complainant DARWIN L.D. CHING,
Director of Labor and Industrial Relations

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of) CASE NO. OSH 2008-9
) (Inspection No. 311431712)
DIRECTOR, DEPARTMENT OF LABOR)
AND INDUSTRIAL RELATIONS,) STIPULATION AND SETTLEMENT
) AGREEMENT; EXHIBIT A; APPROVAL
Complainant,) AND ORDER
)
vs.)
)
MACSTEEL SERVICE CENTERS USA,)
)
Respondent.)

STIPULATION AND SETTLEMENT AGREEMENT

Complainant DARWIN L.D. CHING, Director of Labor and Industrial Relations
("Director") and Respondent MACSTEEL SERVICE CENTERS USA ("Respondent") having
reached a full and complete settlement of the above-captioned contested case presently pending
before the Hawaii Labor Relations Board ("Board") stipulate and agree as follows:

On or about May 7, 2008, the Director, by and through the State of Hawaii's
Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located

at 91-104 Kalaeloa Blvd., Kapolei, Hawaii 96707.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on July 18, 2008 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$1,750.00. See Exhibit A.

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").
2. At all relevant times, Respondent maintained a workplace at 91-104 Kalaeloa Blvd., Kapolei, Hawaii 96707.
3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.
4. Respondent agrees that it has or will abate each violation listed in the Citation in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22. Respondent shall submit the completed abatement certification to HIOSH no later than thirty days after the filing of this stipulation and settlement agreement; failure to timely do so may result in additional penalties or follow up inspections.
5. The Citation is amended as follows:
 - a. Citation 1, Item 2; Citation 2, Item 1; Citation 2, Item 2a; and Citation

2, Item 2b, along with their characterizations and penalties are affirmed. See Exhibit A.

b. Citation 1, Item 1a and Citation 1, Item 1b are recharacterized from Serious to Other. See Exhibit A.

6. The Director reduces the aggregate penalty from \$1,750.00 to \$875.00 which shall be paid in full to the Director of Budget and Finance upon the execution of this Agreement.

7. Respondent will perform a hazard assessment in accordance with 29 CFR 1910.132(d)(1) and (d)(2) [Refer to chapter 12-64.1, HAR] to determine employee exposure level during welding/cutting; this may need to include airborne monitoring. This assessment shall be completed no later than thirty days after the filing of this stipulation and settlement agreement.

8. If Respondent fails to fulfill any condition of this Agreement within the time stated, the characterizations of Citation 1, Item 1a and Citation 1, Item 1b that were reduced to Other along with the original penalty amount shall automatically and without further notice be reinstated to Serious and shall be final and conclusive and shall be treated as such with regard to any future citations the Director may issue against Respondent including, but not limited to, any "repeat" violations. All amounts shall be immediately due and owing. If Respondent fails to pay all penalties and the Director institutes legal action to collect on the outstanding amount due, Respondent agrees to pay all fees and costs, including reasonable attorney's fees, incurred to collect on the unpaid penalties. Any forbearance by the Director in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

9. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation,

as amended, shall become a final order of the Director.

10. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

11. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

12. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

13. Upon approval of this Agreement, all proceedings before the Board shall be dismissed.

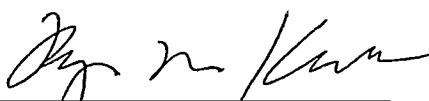
DATED: Honolulu, Hawaii, December 11, 2008.

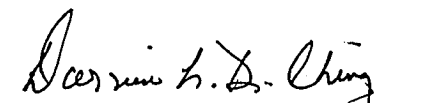
MACSTEEL SERVICE CENTERS


JOHN ZERBE
Operations Manager

APPROVED AS TO FORM:

DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS


ROBYN M. KUWABE
Deputy Attorney General
Attorney for Director of Labor and
Industrial Relations, State of Hawaii


DARWIN L.D. CHING

APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 306


DATED: January 14, 2009



JAMES B. NICHOLSON, Chair



EMORY J. SPRINGER, Member



SARAH R. HIRAKAMI, Member

Director, Department of Labor and Industrial Relations v. Macsteel Service Centers USA, OSH
2008-9 (Insp. No. 311431712) – Stipulation and Settlement Agreement

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813
Phone: (808)586-9090 FAX: (808)586-9104



Certified Number: 7005 1820 0003 3812 4239

Citation and Notification of Penalty

To:

Macsteel Service Centers U S A
and its successors
91-104 Kalaeloa Blvd
Kapolei, HI 96707

Inspection Number: 311431712 (Yunlin Huang)
Inspection Date(s): 05/07/2008- 05/07/2008
Issuance Date: 07/18/2008
OSHO ID: Z5490
Optional Report No.: 0833
Inspection Type: Programmed Planned
Scope of Inspection: Comprehensive Inspection

Inspection Site:

91-104 Kalaeloa Blvd
Kapolei, HI 96707

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20-calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 5, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violations which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-55-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - You should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.

ABATEMENT CERTIFICATION

DARWIN L.D. CHING, DIRECTOR
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

Macsteel Service Centers U S A
91-104 Kalaeloa Blvd
Kapolei, HI 96707

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

I attest that the information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement activities described in this certification.

Signature

Typed or Printed Name



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 07/18/2008. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, HONOLULU, HI, 96813 on _____ at _____.

Employees and/or representatives of employees have a right to attend an informal conference.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 311431712
Inspection Dates: 05/07/2008 - 05/07/2008
Issuance Date: 07/18/2008



Citation and Notification of Penalty

Company Name: Macsteel Service Centers U S A
Inspection Site: 91-104 Kalaeloa Blvd, Kapolei, HI 96707

The alleged violations below (1a & 1b) have been grouped because they involve similar or related hazards that may increase the potential for illness and injury.

Citation 1 Item 1a Type of Violation: Serious

29 CFR 1910.134(c)(1) [Refer to chapter 12-64.1, HAR] was violated because:

The employer did not establish and implement a written respiratory protection program for the employee who was required to wear air purifying respirators.

29 CFR 1910.134(c)(1) states "In any workplace where respirators are necessary to protect the health of the employee or whenever respirators are required by the employer, the employer shall establish and implement a written respiratory protection program with worksite-specific procedures. The program shall be updated as necessary to reflect those changes in workplace conditions that affect respirator use. The employer shall include in the program the following provisions of this section, as applicable: (i) Procedures for selecting respirators for use in the workplace; (ii) Medical evaluations of employees required to use respirators; (iii) Fit testing procedures for tight-fitting respirators; (iv) Procedures for proper use of respirators in routine and reasonably foreseeable emergency situations; (v) Procedures and schedules for cleaning, disinfecting, storing, inspecting, repairing, discarding, and otherwise maintaining respirators; (vi) Procedures to ensure adequate air quality, quantity, and flow of breathing air for atmosphere-supplying respirators; (vii) Training of employees in the respiratory hazards to which they are potentially exposed during routine and emergency situations; (viii) Training of employees in the proper use of respirators, including putting on and removing them, any limitations on their use, and their maintenance; and (ix) Procedures for regularly evaluating the effectiveness of the program."

Location: Establishment

Date By Which Violation Must be Abated:
Penalty:

08/11/2008
\$ 875.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Macsteel Service Centers U S A
Inspection Site: 91-104 Kalaeloa Blvd, Kapolei, HI 96707

Citation 1 Item 1b Type of Violation: **Serious**

29 CFR 1910.134(e)(1) [Refer to chapter 12-64.1, HAR] was violated because:

The employer did not provide a medical evaluation to the employees who used the air purifying respirator for work. Without a medical evaluation the employee who wore the respirator was potentially exposed to serious health hazards due to underlying cardiac or pulmonary disorder.

29 CFR 1910.134(e)(1) states "General. The employer shall provide a medical evaluation to determine the employee's ability to use a respirator, before the employee is fit tested or required to use the respirator in the workplace. The employer may discontinue an employee's medical evaluations when the employee is no longer required to use a respirator."

Location: Establishment

Date By Which Violation Must be Abated:

08/11/2008

Citation 1 Item 2 Type of Violation: **Serious**

29 CFR 1910.304(g)(5) [Refer to chapter 12-89.1, HAR] was violated because:

The ground pins of the plugs in two metal standing industrial fans were missing thus potentially exposing the employees to serious electrical hazards.

29 CFR 1910.304(g)(5) states "Grounding path. The path to ground from circuits, equipment, and enclosures shall be permanent, continuous, and effective."

Location: Roll form and shear plants

Date By Which Violation Must be Abated:
Penalty:

Corrected
\$. 875.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

2000000000V000000000VState of Hawaii
Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 311431712
Inspection Dates: 05/07/2008 - 05/07/2008
Issuance Date: 07/18/2008



Citation and Notification of Penalty

Company Name: Macsteel Service Centers U S A
Inspection Site: 91-104 Kalaeloa Blvd, Kapolei, HI 96707

Citation 2 Item 1 Type of Violation: Other

29 CFR 1910.134(f)(2) [Refer to chapter 12-64.1, HAR] was violated because:

The employer did not provide fit testing to the employee who used the air purifying respirator thus potentially exposing the employee to serious chemical and health hazards.

29 CFR 1910.134(f)(2) states "The employer shall ensure that an employee using a tight-fitting facepiece respirator is fit tested prior to initial use of the respirator, whenever a different respirator facepiece (size, style, model or make) is used, and at least annually thereafter."

Location: Establishment

Date By Which Violation Must be Abated:
Penalty:

08/11/2008
\$ 0.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

200000000V00000000VState of Hawaii
Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 311431712
Inspection Dates: 05/07/2008 - 05/07/2008
Issuance Date: 07/18/2008



Citation and Notification of Penalty

Company Name: Macsteel Service Centers U S A
Inspection Site: 91-104 Kalaeloa Blvd, Kapolei, HI 96707

The alleged violations below (2a & 2b) have been grouped because they involve similar or related hazards that may increase the potential for illness and injury.

Citation 2 Item 2a Type of Violation: Other

29 CFR 1910.134(k)(3) [Refer to chapter 12-64.1, HAR] was violated because:

The employer did not provide training to the employee prior to the use of respirators thus potentially exposing the employee to serious chemical and health hazards.

29 CFR 1910.134(k)(3) states "The employer shall provide the training prior to requiring the employee to use a respirator in the workplace."

Location: Establishment

Date By Which Violation Must be Abated:
Penalty:

08/10/2008
\$ 0.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Macsteel Service Centers U S A
Inspection Site: 91-104 Kalaeloa Blvd, Kapolei, HI 96707

Citation 2 Item 2b Type of Violation: Other

29 CFR 1910.134(k)(5) [Refer to chapter 12-64.1, HAR] was violated because:

The employer did not provide annual retraining to the employee who wore respirators for work thus potentially exposing the employee to serious chemical and health hazards.

29 CFR 1910.134(k)(5) states "Retraining shall be administered annually, and when the following situations occur: (i) Changes in the workplace or the type of respirator render previous training obsolete; (ii) Inadequacies in the employee's knowledge or use of the respirator indicate that the employee has not retained the requisite understanding or skill; or (iii) Any other situation arises in which retraining appears necessary to ensure safe respirator use."

Location: Establishment


Date By Which Violation Must be Abated:

08/11/2008

Darwin L.D. Ching
for DARWIN L.D. CHING
Director

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

8/11/08

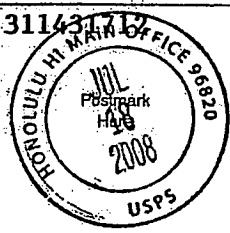
SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>	<p>A. Signature </p> <p><input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <u>John Zerbe</u></p> <p>C. Date of Delivery <u>8/11/08</u></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>1. Article Addressed to: 311431712</p> <p>Mr. John Zerbe Operations Manager Macsteel Service Centers U S A 91-104 Kalaeloa Boulevard Kapolei, Hawaii 96707</p>	<p>3. Service Type: <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label)</p> <p> 7005 11820 0003 15812 14239</p>	
<p>PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540</p>	

4237 2792 3812 4237

U.S. Postal ServiceTM
CERTIFIED MAILTM RECEIPT
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OFFICIAL USE

Health Postage	\$ <u>1.34</u>	311431712
Certified Fee	<u>2.70</u>	
Return Receipt Fee (Endorsement Required)	<u>2.20</u>	
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$ <u>6.24</u>	

Sent To **Macsteel Service Centers U S A**

Street, Apt. No., or PO Box No. **91-104 Kalaeloa Boulevard**

City, State, ZIP+4 **Kapolei, Hawaii 96707**

PS Form 3800, June 2002 See Reverse for Instructions

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

SUMMARY OF PENALTIES

Company Name: Macsteel Service Centers U S A
Inspection Site: 91-104 Kalaeloa Blvd, Kapolei, HI 96707
Issuance Date: 07/18/2008

Summary of Penalties for Inspection Number 311431712

Citation 1, Serious	= \$	1,750.00
Citation 2, Other	= \$	0.00
TOTAL PENALTIES	= \$	1,750.00

Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.